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The Honorable Judge Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ALLISON N. RANDAL,

Plaintiff,

vs.

XPO LOGISTICS, INC., a Delaware corporation conducting business in the State of Washington; MICHAEL D. MICHELENA, an individual employed by XPO LOGISTICS, INC.; J. DOE CORPORATIONS AND/OR ENTITIES 1-5; and DOES 1-5, individuals,

Defendants.

Civil Action No. 3:18-cv-6002-BHS

DECLARATION OF SHAWN A. TOLIVER

Judge: Benjamin H. Settle

Trial Date: October 20, 2020

I, Shawn A. Toliver, declare as follows:

1. I am a partner with the firm Lewis Brisbois Bisgaard & Smith, attorneys of record for Defendants XPO Logistics, Inc. ("XPO") and Michael Michelena, and I make this Declaration on personal knowledge. I am admitted to practice before this Court *pro hac vice*.

2. Attached hereto as Exhibit "A" is a true and correct copy of Plaintiff's Pretrial Statement served on August 28, 2020.

3. Attached hereto as Exhibit "B" is a true and correct copy of the parties' [Proposed] Pretrial Order filed September 28, 2020.

4. Attached hereto as Exhibit "C" are true and correct copies of the relevant pages of the deposition of Allison Randal taken June 27, 2019.

1 5. Attached hereto as Exhibit “D” is a true and correct copy of Dr. Brage’s report
2 dated October 1, 2019.

3 6. Attached hereto as Exhibit “E” is a true and correct copy of Dr. Brage’s report
4 dated March 17, 2020.

5 7. Attached hereto as Exhibit “F” are true and correct copies of the relevant pages of
6 the deposition of Dr. Schuster taken in the case of *Mary Whittenberg v. Live Nation Worldwide,*
7 *et al.*, Superior Court of Washington in and for King County, No.16-2-29490-1 KNT on October
8 5, 2017.

9 8. On September 17, 2020, I attended the meet and confer telephone conference
10 required by LCR 16 with Plaintiff’s counsel Young-Ji Ham. During the teleconference, Ms. Ham
11 confirmed that she did not intend to introduce any exhibits at trial, except that she intended to use
12 some demonstrative exhibits, which she said she intended to provide to Defendants’ counsel a
13 few days before the commencement of trial.

14 9. On September 23, 2020, I received Plaintiff’s counsel Young-Ji Ham’s revised
15 version of the Pretrial Order (“PTO”) in which she disclosed for the first time the demonstrative
16 exhibits Plaintiff intends to use at trial. Attached hereto as Exhibit “G” is a true and correct copy
17 of Plaintiff’s red-lined revised PTO which I received on September 23, 2020.

18 10. On September 23, 2020, Ms. Ham also emailed me a link so that I could review
19 the demonstrative exhibits.

20 11. On September 23, 2020, Ms. Ham, in Plaintiff’s revised PTO, also disclosed that
21 she intends to introduce three YouTube videos of Plaintiff giving seminars as exhibits at trial.

22 12. These communications from Plaintiff’s counsel on September 23, 2020 were the
23 first time Defendants counsel has been provided with notice of exhibits which Plaintiff intends to
24 use for any purpose at trial.

25 13. Plaintiff did not produce any documents attempting to establish her “work travel”
26 during discovery in this case.

14. None of Plaintiff's demonstrative exhibits, other than Demonstrative Exhibits 2 (John Cary Life Plan) and 3 (William Brandt Economic Analysis), have ever been previously produced by Plaintiff to Defendants in this case.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE
AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

EXECUTED this 29th day of September, 2020 at Walnut Creek, California.

LEWIS BRISBOIS BISGAARD & SMITH LLP

/s/ *Shawn A. Toliver*

Shawn A. Toliver, WA Bar No. *Pro Hac Vice*

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Attorneys for Defendants XPO Logistics, Inc. and Michael Michelena

DECLARATION OF SERVICE

The undersigned certifies under the penalty of perjury that on the date set forth below, I caused to be served a copy of the foregoing document on the following individuals in the manner indicated:

Young-Ji Ham Jenna M. Labourr WASHINGTON INJURY LAWYERS, PLLC 1001 Fourth Avenue, Suite 3200 Seattle, WA 98154 youngji@washinjurylaw.com jenna@washinjurylaw.com <i>Counsel for Plaintiff</i>	(x)	Electronic service via CM/ECF
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EXECUTED this 29th day of September, 2020, at Seattle, Washington.

s/ Christopher A. Campbell

Christopher A. Campbell, WSBA #50959